

(ii) The total number of contribution base units with respect to which the employer had an obligation to contribute to the plan for the plan year following the partial withdrawal year.

(2) *Partial withdrawals under section 4205(a)(2)*. An employer that resumes the obligation to contribute with respect to a facility or collective bargaining agreement that gave rise to a partial withdrawal, but does not qualify to have that liability waived under paragraph (b) of this section, shall have its annual partial withdrawal liability payment reduced for any plan year in which the total number of contribution base units with respect to which the employer has an obligation to contribute equals or exceeds the sum of—

(i) The number of contribution base units for the reentered facility or agreement during that year; and

(ii) The total number of contribution base units with respect to which the employer had an obligation to contribute to the plan for the year following the partial withdrawal year.

(d) *High base year*. For purposes of paragraphs (a) and (b)(1)(iii) of this section, the high base year contributions are the average of the total contribution base units for the two plan years for which the employer's total contribution base units were highest within the five plan years immediately preceding the beginning of the 3-year testing period defined in section 4205(b)(1)(B)(i) of ERISA, with respect to paragraph (a) of this section, or the partial withdrawal year, with respect to paragraph (b)(1)(iii) of this section. For purposes of paragraphs (b)(1)(ii) and (b)(2) of this section, the high base year contributions are the average number of contribution base units for the facility or under the agreement for the two plan years for which the employer's contribution base units for that facility or under that agreement were highest within the five plan years immediately preceding the partial withdrawal.

**§ 4208.5 Withdrawal liability payments during pendency of abatement determination.**

(a) *Bond/Escrow*. An employer that has satisfied the requirements of § 4208.4(a)(1) without regard to “90 per-

cent of” or § 4208.4(b) for one year with respect to all partial withdrawals it incurred in a plan year may, in lieu of making scheduled withdrawal liability payments in the second year for those withdrawals, provide a bond to, or establish an escrow account for, the plan that satisfies the requirements of paragraph (b) of this section or any plan rules adopted under paragraph (d) of this section, pending a determination by the plan sponsor of whether the employer satisfies the requirements of § 4208.4 (a)(1) or (b) for the second consecutive plan year. An employer that applies for abatement and neither provides a bond/escrow nor makes its withdrawal liability payments remains eligible for abatement.

(b) *Amount of bond/escrow*. The bond or escrow allowed by this section shall be in an amount equal to 50 percent of the withdrawal liability payments that would otherwise be due. The bond or escrow relating to each payment shall be furnished before the due date of that payment. A single bond or escrow may be provided for more than one payment due during the pendency of the plan sponsor's determination. The bond or escrow agreement shall provide that if the plan sponsor determines that the employer does not satisfy the requirements for abatement of its partial withdrawal liability under § 4208.4 (a)(1) or (b), the bond or escrow shall be paid to the plan upon notice from the plan sponsor to the bonding or escrow agent. A bond provided under this paragraph shall be issued by a corporate surety company that is an acceptable surety for purposes of section 412 of ERISA.

(c) *Notice of bond/escrow*. Concurrently with posting a bond or establishing an escrow account under this section, the employer shall notify the plan sponsor. The notice shall include a statement of the amount of the bond or escrow, the scheduled payment or payments with respect to which the bond or escrow is being furnished, and the name and address of the bonding or escrow agent.

(d) *Plan amendments concerning bond/escrow*. A plan may, by amendment, adopt rules decreasing the amount of

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the bond or escrow specified in paragraph (b) of this section. A plan amendment adopted under this paragraph may be applied only to the extent that it is consistent with the purposes of ERISA. An amendment satisfies this requirement only if it does not create an unreasonable risk of loss to the plan.

(e) *Plan sponsor determination.* Within 60 days after the end of the plan year in which the bond/escrow is furnished, the plan sponsor shall determine whether the employer satisfied the requirements of § 4208.4 (a)(1) or (b) for the second consecutive plan year. The plan sponsor shall notify the employer and the bonding or escrow agent in writing of its determination and of the consequences of its determination, as described in § 4208.3 (c) or (d) and (e), as appropriate.

### **§ 4208.6 Computation of reduced annual partial withdrawal liability payment.**

(a) *Amount of reduced payment.* An employer that satisfies the requirements of § 4208.4 (c)(1) or (c)(2) shall have its annual partial withdrawal liability payment for that plan year reduced in accordance with paragraph (a)(1) or (a)(2) of this section, respectively.

(1) The reduced annual payment amount for an employer that satisfies § 4208.4(c)(1) shall be determined by substituting the number of contribution base units in the plan year in which the requirements are satisfied for the number of contribution base units in the year following the partial withdrawal year in the numerator of the fraction described in section 4206(a)(2)(A) of ERISA.

(2) The reduced annual payment for an employer that satisfies § 4208.4(c)(2) shall be determined by adding the contribution base units for which the employer is obligated to contribute with respect to the reentered facility or agreement in the year in which the requirements are satisfied to the numerator of the fraction described in section 4206(a)(2)(A) of ERISA.

(b) *Credit for reduction.* The plan sponsor shall credit the account of an employer that satisfies the requirements of § 4208.4(c)(1) or (c)(2) with the

amount of annual withdrawal liability that it paid in excess of the amount described in paragraph (a)(1) or (a)(2) of this section, as appropriate. The credit shall be applied, a revised payment schedule issued, refund made and interest added, all in accordance with § 4208.3(c)(4).

### **§ 4208.7 Adjustment of withdrawal liability for subsequent withdrawals.**

The liability of an employer for a partial or complete withdrawal from a plan subsequent to a partial withdrawal from that plan in a prior plan year shall be reduced in accordance with part 4206 of this chapter.

### **§ 4208.8 Multiple partial withdrawals in one plan year.**

(a) *General rule.* If an employer partially withdraws from the same multiemployer plan on two or more occasions during the same plan year, the rules of § 4208.4 shall be applied as modified by this section.

(b) *Partial withdrawals under section 4205 (a)(1) and (a)(2) in the same plan year.* If an employer partially withdraws from the same multiemployer plan as a result of a 70-percent contribution decline and a partial cessation of the employer's contribution obligation in the same plan year, the employer shall not be eligible for abatement under § 4208.4 (b) or (c)(2) or under paragraph (c) of this section. The employer may qualify for abatement under § 4208.4(a) and (c)(1) and under any rules adopted by the plan pursuant to § 4208.9.

(c) *Multiple partial cessations of the employer's contribution obligation.* If an employer permanently ceases to have an obligation to contribute for more than one facility, under more than one collective bargaining agreement, or for one or more facilities and under one or more collective bargaining agreements, resulting in multiple partial withdrawals under section 4205(b)(2)(A) in the same plan year, the abatement rules in § 4208.4(b) shall be applied as modified by this paragraph. If an employer resumes work at all such facilities and under all such collective bargaining agreements, the determination of whether the employer qualifies for elimination of its liability under